
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 12, 2003

TO: PARTIES OF RECORD IN APPLICATION 00-05-032

Decision 03-06-028 is being mailed without the dissent of Commissioner Wood.
The dissent will be mailed separately.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG/bb1

Attachment

Mailed 6/12/2003

Decision 03-06-028 June 5, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
to establish Market Values for and to Sell its
Generation-Related Assets Located in Rodeo,
Martinez and Antioch Pursuant to Public Utilities
Code Section 367(b) and 851. (U 39 M)

Application 00-05-032
(Filed May 15, 2000)

**OPINION GRANTING APPLICATION TO SELL PROPERTIES
IN RODEO, MARTINEZ AND ANTIOCH**

1. Summary

Pacific Gas and Electric Company (PG&E) seeks authorization, pursuant to Pub. Util. Code §§ 367(b) and 851, to market value by sale non-nuclear generation-related properties in Rodeo, Martinez and Antioch. The application is unopposed.

The Commission concludes that § 377, as amended by Assembly Bill (AB) 6X, does not bar the sale of generation-related properties no longer used directly or indirectly for electric generation purposes. Also, the sale of these properties is in the public interest as required by § 851. The application is granted and the proceeding is closed.

2. Procedural History

The application was filed on May 15, 2000, and was noticed in the Commission's Daily Calendar on May 23, 2000. In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this proceeding as ratesetting and preliminary determined that hearings were not necessary. No

protests were received regarding the proposed sale of these properties; therefore, a public hearing is not required and, we affirm the determinations made in Resolution ALJ 176-3040.

Since § 377 was amended¹ by the Legislature after this application was filed, the assigned administrative law judge (ALJ) directed PG&E to file a brief addressing the application of § 377 to the proposed land sales. On August 12, 2002, PG&E filed its brief and this matter was submitted for decision based on the pleadings

3. Factual Background

PG&E's application includes the three properties described below:

A. The Rodeo Property

PG&E purchased this 23.8-acre property in 1939 and built a 100-megawatt (MW) steam generation plant on the site. PG&E operated the generation facility until 1987, and removed the generation plant in 1997. The site is currently vacant except for a switchyard. PG&E proposes to sell approximately 22 acres of the property to the Tosco Oil Company (Tosco) and will retain approximately 1.8 acres containing the switchyard. PG&E states that with the exception of the switchyard, the property is not necessary and useful to PG&E's utility distribution operations.

B. The Martinez Property

PG&E purchased this 11-acre property in the late 1930s and built a 40 MW steam generation plant on the site. PG&E operated the generation facility

¹ AB 6 from the 2001-2002 Extraordinary Session (AB 6X) amended § 377, adding the prohibition on sales of facilities for generation of electricity through year-end 2005.

until 1985, and removed it in 1996. PG&E proposes to sell approximately seven acres to Equilon Enterprises LLC (Equilon) and will retain approximately four acres containing a switching station, substation, gas meter and valve station, and an access road. PG&E states that with the easements it is retaining, it will not need to maintain ownership in fee of the property to be sold.

C. The Antioch Property

In 1992, PG&E acquired this 12-acre parcel of land in Antioch to settle a legal claim related to particulate fallout from the Contra Costa Power Plant, which PG&E has since sold. The property, also known as the “Los Medanos” property, is currently leased to Carone Management and Investment Inc. (Carone), which operates a recreational vehicle storage facility there. Carone has submitted a bid for the property.

4. Section 377

In considering this application, we need to address § 377, which reads:

The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no *facility for the generation of electricity* owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility *generation assets* remain dedicated to service for the benefit of California ratepayers. (Section 377, as amended by AB 6X, emphasis added.)

Thus, before we may consider the merits of this application, we must address the threshold question— whether § 377 bars the proposed transaction?

The assets in question here were owned by PG&E prior to January 1, 1997. We must determine whether the assets that PG&E wants to dispose of are a facility or facilities for the generation of electricity. If so, such assets may not be disposed of prior to January 1, 2006. The obvious example of a facility used for the generation of electricity would be a power plant, which literally is a facility that generates electricity. Section 377 clearly bars disposal of power plants owned by public utilities.²

But we are left with the question of whether § 377 only bars disposal of a power plant, itself, or whether it has a broader scope. We must determine whether a facility for the generation of electricity includes more than just the power plant. For example, does § 377 bar the sale of generation-related properties no longer used directly or indirectly for electric generation purposes?

Section 377 states that “public utility generation assets” are to remain dedicated to service for the benefit of California ratepayers. Section 377 does not specifically define the phrases “facilities for the generation of electricity” or “generation assets”, both used in the statute. To the extent there is any potential conflict between the phrases “facilities for the generation of electricity” and “generation asset,” that conflict must be harmonized. (See, e.g. *Wells v. Marina City Properties, Inc.* (1981) 29 Cal. 3d, 781, 788; *Louisiana-Pacific Corp. v. Humbolt Bay Municipal Water District* (1982) 137 Cal.App. 3d 152, 156.)

Here, we find looking to the available legislative committee analyses prepared for AB 6X discussion offers only limited guidance in harmonizing the phrases and understanding the legislative purpose and intent. In particular, we

² This is confirmed by the subsequent enactment of § 377.1, which expressly exempted six hydroelectric plants from the restrictions of § 377.

have looked to the analyses prepared for the Assembly Committee on Appropriations (January 12, 2000), the Assembly Committee on Energy Costs and Availability (January 11, 2001), and the Senate Energy, Utilities and Communications Committee (January 17, 2001).

In general, the committee analyses demonstrate a focus on megawatts (MW) of generation capacity. The Senate Energy, Utilities and Communications Committee specifically framed its inquiry as: (1) should utilities be required to secure explicit authorization from the CPUC prior to disposing of generation assets; and (2) should there be an outright ban on the sale of utility power plants for five years? The analysis identified the key assets in question as PG&E's hydroelectric system³ and Diablo Canyon nuclear plant; SCE's hydroelectric system, its interest in the San Onofre nuclear plant and its interest in the Mohave coal-fired plant in Arizona; and SDG&E's interest in the San Onofre nuclear plant.

Unfortunately, we have no record upon which to determine whether or to what extent the legislative committees may have considered sales not involving the hydroelectric systems or nuclear plants. It is clear, however, that the legislature primarily and unquestionably intended to prohibit the disposal of public utility power generation plants to ensure that generation assets remain dedicated to the service of California ratepayers.

Although the legislature did not define "generation assets," the term is used in utility regulation as a term of art. This Commission has defined

³ In A.99-09-053, PG&E's application for Commission authorization to divest its hydroelectric generating facilities, which the legislature was aware of, the hydroelectric system included all associated watershed lands.

generation assets as including “nonplant physical assets.” (D. 95-12-063, as modified by D.96-01-009, pp. 50-51.) The Uniform System of Accounts (USOA) of the Federal Energy Regulatory Commission (FERC) provides guidance that generation assets may include more than just the power plant itself.⁴ Electric Plant Account 310 includes the cost of land and land rights associated with steam generation, and Account 330 includes land and land rights for hydroelectric generation. Accounts 311 and 331 include the respective cost of structures and improvements for steam and hydroelectric generation, while Account 332 includes the cost of reservoirs, dams, and waterways used for hydroelectric generation. Yet we recognize that accounting conventions are not always coextensive with the functional and practical requirements of generating electricity.

Given the above stated framework, we believe we must exercise discretion and make a factual determination of whether the denial of the disposition, in our view, is necessary to ensure dedication of generation assets to service for California ratepayers. This requires consideration of the nature, history, past or future intended use of the asset, including the nexus between it and future generation. In making these determinations, we will evaluate each § 851 application according to its unique facts, on a case by case basis, to determine whether the requested disposition is barred by § 377.

Accordingly, today we approve the proposed sale of PG&E’s properties in Rodeo, Martinez, and Antioch. The generation plants no longer exist on these properties. PG&E’s distribution facilities on each property will be retained by

⁴ Utilities conform their records to the USOA. See, e.g., *Resource* 2nd Edition 1992.

ownership or easements, respectively. The land is not and will not potentially be, used directly or indirectly for electric generation purposes. Denying the proposed sales would not help ensure that generation assets remain dedicated to service for the benefit of California ratepayers as intended by the legislature. We do not believe the legislature intended to prohibit sales of this nature when it contemplated or passed AB 6X to amend § 377.

Furthermore, the Commission has provided its interpretation of § 377 in the context of PG&E's application to market value and sell its Kern Facility. (Decision (D.) 01-04-004, 2001 Cal PUC LEXIS 414.) The Kern Facility was the site of a PG&E (non-operating) power plant. While the Commission rejected PG&E's proposed sale of the Kern Facility as being barred by statute, the discussion in D.01-04-004 supports the position that § 377 applies only to facilities that actually generate electricity. Specifically, the Commission states:

Given the unreasonable nature of the current wholesale market, and the Federal Energy Regulatory Commission's failure to act to correct the market problems, it is not in the public interest to divest regulated utility generation assets, where the owners of those divested assets could then sell power to ratepayers at unreasonable market prices, or manage power production and sales in ways that do not benefit California consumers. This concern has led the Legislature to preclude divestiture of utility generation assets until 2006, and led the Commission to defer approval of application to sell the Mohave, Palo Verde and Four Corners generation facilities. (D.01-04-004, 2001, Cal. PUC LEXIS 414, *4-5.)

The Commission's reasoning in rejecting the Kern Facility sale, with the emphasis on the ability to "sell power to ratepayers at unreasonable market prices," supports the argument that § 377 was not intended to preclude the sale of land that was not used directly or indirectly to generate electricity. In the

instant proceeding, the new owners of the properties at issue would not be able to use the assets to “then sell power to ratepayers at unreasonable market prices.” Unlike the Mohave, Palo Verde and Four Corners facilities, the properties at issue do not directly or indirectly generate electricity. Whereas the Kern Facility was an actual power plant, (albeit a non-operating plant), the properties at issue are but parcels of real property that formerly supported a generation asset that has long since been dismantled and removed. Therefore, we find that § 377 does not bar the proposed sale.

5. Section 851

PG&E’s application is made under § 851, which requires Commission approval before a utility can sell the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: “The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.” (D.02-01-058 (2002).) With these requirements in mind, we examine the public interest aspect of the sale of the three properties below:

A. The Rodeo Property

PG&E began negotiating with Tosco to purchase the property “as is” and to require Tosco to indemnify PG&E for refinery-related site contamination in February 2000. Tosco is the logical buyer because its oil refinery surrounds the Rodeo property and recent sales history in the area indicates that they have been paying the highest market prices for properties they have acquired in the general area of the refinery. In addition, the Rodeo property is impacted with petroleum products caused by releases from historical power plant operations and from

historical refinery operations. Sale of the Rodeo property to Tosco will resolve the contamination-related legal claims between Tosco and PG&E and avoid the need for PG&E to engage in expensive site remediation costs. The sale price will be determined through arm's length negotiations based on current market prices for similarly situated real property and the parties' relative responsibility for contamination. Thus, it can be seen that the public interest is served because the property is no longer needed for PG&E's utility distribution operations and sale of the property will save ratepayers the costs of legal proceedings with Tosco and site remediation.

B. The Martinez Property

PG&E began negotiating with Equilon to purchase the property "as is" in February 2000 and to require Equilon to indemnify PG&E for refinery-related site contamination in February 2000. Equilon is the logical buyer because its oil refinery surrounds the Martinez property and recent sales history in the area indicates that they have been paying the highest market prices for properties they have acquired in the general area of the refinery. Moreover, a portion of the property is subject to a lease to Equilon that extends through 2008. The leased area is critical to power service for the refinery (which will likely operate beyond 2008), which should enhance Equilon's interest in purchasing the property. Finally, the Martinez property is impacted with petroleum products caused by releases from historical power plant operations and from historical refinery operations. Sale of the Martinez property to Equilon will resolve the potential contamination-related legal claims between Equilon and Pacific Gas and Electric Company. The sale price will be determined through arm's length negotiations based on current market prices for similarly situated real property and the parties' relative responsibility for contamination. Thus, it can be seen that the

public interest is served because the property is no longer needed for PG&E's utility operations and the sale of the property will make the property available for other productive uses, and will save ratepayers the cost of legal proceedings and the cost of remediation.

C. The Antioch Property

As stated above, this 12-acre parcel is currently leased to Carone as a recreational vehicle storage, sales and maintenance facility. Buildings located on the property include three houses (one mobile and two permanent), one vehicle maintenance building, and two vehicle wash racks. This 12-acre property is part of generation rate base, with an allocated original cost of \$3,875,454. The proposed sale is in the public interest because the property is not necessary or useful to PG&E's utility distribution operation. The sale will make this property available for other productive uses. Also, the sale will remove these costs from PG&E's rate base resulting in lower rates for all ratepayers, the same as for the two properties discussed above.

6. California Environmental Quality Act (CEQA)

Neither PG&E nor the buyers seek authority from the Commission to change the existing uses of the properties. Thus, it can be seen with certainty that there is no possibility that the transfer of ownership of the properties may have a significant effect on the environment. Accordingly, under CEQA Guideline 15061 (b)(3), the proposed sale is not subject to CEQA.

7. Ratemaking Treatment

PG&E proposes to credit the TCBA with the net proceeds after accounting for transaction costs, taxes and net book value. If sales proceeds do not yield a

credit, the uneconomic costs will be amortized over the remaining months of the transition period.

At the request of the Office of Ratepayer Advocates (ORA), PG&E provided further details regarding the proposed accounting treatment in its May 29, 2000 supplement to the application. ORA does not oppose PG&E's proposed accounting treatment or the proposal to sell the properties.

8. Conclusion

The properties to be sold are no longer needed for PG&E's utility distribution operations. Sale of these properties would serve the public interest because the properties would then be available for other productive purposes without interfering with the utility's operations or affecting service to utility customers. Also, sale of the properties will remove these costs from the utility's rate base and reduce operating expenses, resulting in lower rates for all ratepayers. Therefore, we conclude that the application should be granted.

9. Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Kennedy in this matter was mailed to the parties on May 8, 2003, in accordance with § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received from Equilon Enterprises, dba Shell Oil Products US, Pacific Terminals LLC, and Southern California Edison Company. All comments agree with the alternate draft decision that § 377 (as amended by AB 6X) does not bar the sale of the properties which are the subject of this proceeding.

10. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Rodeo, Martinez and Antioch properties are no longer used directly or indirectly for electric generation purposes.
2. Section 377 does not bar the sale of the Rodeo, Martinez and Antioch properties because none of these properties are a “facility for generation of electricity” or a “generation asset.”
3. Sale of the Rodeo, Martinez and Antioch properties is not an activity subject to CEQA because the proposed change in ownership will not result in a direct or reasonably foreseeable indirect physical change in the environment.
4. Sale of the Rodeo, Martinez and Antioch properties is in the public interest because these properties are no longer needed for PG&E utility operations. Sale of the properties will make these properties available for other productive purposes, reduce rate base and operation expenses, lower rates for all ratepayers and is in the public interest as required by § 851.

Conclusion of Law

PG&E’s application to sell the Rodeo, Martinez and Antioch properties should be granted.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company to sell the Rodeo, Martinez and Antioch properties is granted.
2. This proceeding is closed.

This order is effective today.

Dated June 5, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a dissent.

/s/ CARL W. WOOD
Commissioner

I dissent

/s/ LORETTA M. LYNCH
Commissioner